



STATE BOARD OF EQUALIZATION

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May 5, 1987

Dear Mr. :

This is in response to your request for our opinion on whether the interspousal exclusion from change in ownership applies to the following situation.

Prior to their marriage, a husband and wife entered into an Antenuptial Agreement in which the wife agreed that upon her death the husband could purchase her sole and separate property residence from her estate for a fixed sum. You ask whether the exercise by the husband of the option to purchase the residence from the estate of the wife, provided they were married at the time of the wife's demise, will be treated as an interspousal transfer and therefore not a change of ownership.

Revenue and Taxation Code section 63 provides as follows:

Notwithstanding any other provision in this chapter, a change in ownership shall not include any interspousal transfer, including, but not limited to:

* * *

(b) Transfers which take effect upon the death of a spouse.

Section 63 provides that any interspousal transfer shall be excluded from change in ownership. This language indicates the legislative intent that section 63 be broadly construed to apply to all interspousal transfers. However, in the present case the transfer will not be between husband and wife, but, instead, between the husband and the wife's heirs. Board Rule 462(n)(3) provides that:

For purposes of reappraising real property as of the date of change in ownership of real property, the following dates shall be used:

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(3) Inheritance (by will or intestate succession).
The date of death of the decedent.

Therefore, when the wife passed away, the residence passed to her heirs and was subject to reappraisal on the date of her death. Since her husband is not one of these heirs (we assume), the interspousal exclusion did not apply. If the husband chooses to exercise his option, he will be purchasing the property from the heirs who obtained title as of the wife's date of death. (Board Rule 462(n)(3); Probate Code section 300.)

If you have any questions or wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks
Tax Counsel

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